

Executive Summary

2005 was a year of uneven progress for civil society in Central and Eastern Europe and Eurasia. While sustainability in the European countries continued to progress or consolidate, the NGO environment in many Eurasian countries deteriorated. Some of the most dramatic developments of the year centered on efforts of governments, primarily in the former Soviet Union, to constrain civil society activities, particularly where they appear to pose a threat to the government in power.

One of key lessons that can be drawn from nine years of Sustainability Index data is that there is no single intervention that a government can make that will dramatically improve the sustainability of NGOs over the course of a single year. Progress on overall NGO sustainability tends to be gradual. For example, as the scores from this year's index bear out, it is difficult to trigger improvements in organizational capacity of NGOs so widespread and effective that scores in that dimension will improve (or decline) significantly from year to year.¹ On the other hand, as events of 2005 highlight, it is possible for a government to engineer considerable and immediate deterioration in the environment for NGO sustainability using a single weapon – repressive legal environments governing the sector. The Legal Environment Dimension of the Index captures both deterioration in the conditions for NGO sustainability due to, e.g., harassment within existing legal frameworks, as well as adoption and implementation of new laws that lay the groundwork for even greater repression and harassment. This volume of the Sustainability Index focuses on how the laws governing civil society organizations have become a key weapon in the efforts of authoritarian regimes to control civil society organizations in the article, “*Civil Society Under Threat: Common Legal Barriers and Potential Responses.*”

Probably the most prominent example of this phenomenon in this year's index is Uzbekistan. In Uzbekistan, the government's violent suppression of the May 2005 civilian uprising in the Andijan region was followed by increased harassment and human rights abuses targeted at civil society. This included requests that organizations “voluntarily” cease their operations, lengthy questioning of NGO employees, and suspending the operations of some NGOs. Banking restrictions enacted in 2004 have left 90% of all organizations without access to foreign funding.

But there are other examples as well. In Russia, one of the year's key developments was the enactment of amendments to the laws governing various types of NGOs which gave the government greater power over NGOs. Among other things, the law allows the government broader authority to deny registration to NGOs, oversee their financing by foreign donors, and control their activities. A campaign by over one hundred civil society organizations was successful in combating provisions in an earlier draft of the law that would have imposed even more significant restraints on civil society, including a provision that would have required even small informal organizations to notify the government of their existence. Despite this partial success, the law ultimately enacted by the Duma and signed by the President Putin contains a number of regressive provisions and – just as worrisome – creates new areas within which government agents have wide latitude for discretionary decision-making regarding NGO activities.

¹ The Editorial Committee for that reason was restrained this year in according score increases of more than .1 or .2, reflecting that in most dimensions it is difficult to achieve significant and lasting change over a short period of time.

In Kazakhstan, in advance of the 2005 elections, the Parliament passed a law severely restricting foreign funding of NGOs; this law was ultimately not signed by the President after the Constitutional Court found portions of it unconstitutional. However, the Law on National Security was adopted, and it provides criminal sanctions for formation of informal associations. Turkmenistan continues to use its laws to restrict NGO formation to the extent that only a handful of NGO have been registered in recent years; those that are able to register suffer invasive oversight. In Belarus the adoption of new repressive laws and regulations, including a provision permitting the government to suspend an organization's activities for up to six months and liquidate its assets for, e.g., the "illegal" use of foreign aid, caused NGO sustainability as measured by the Index to deteriorate to its lowest point to date.

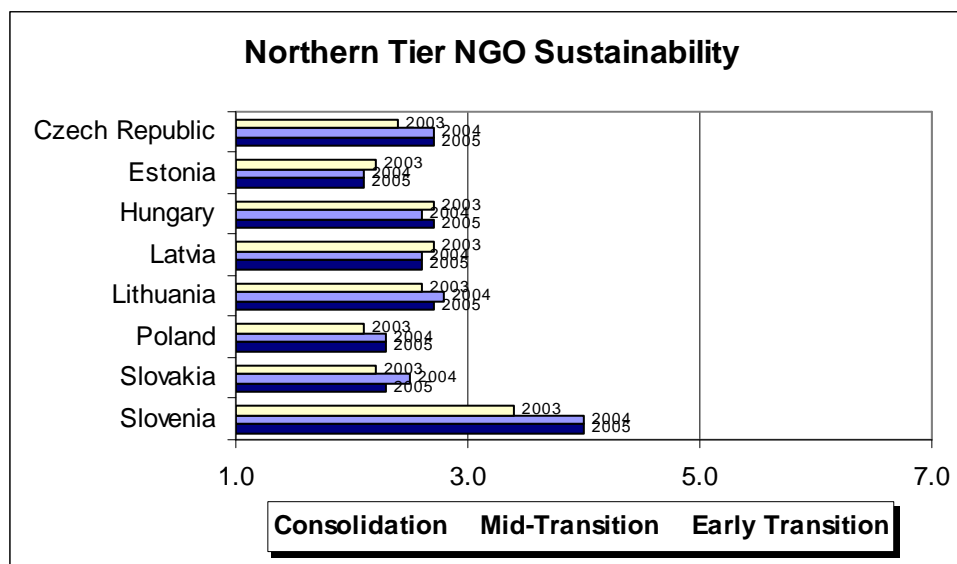
One question posed in last year's index concerned the revolutions in Georgia, Ukraine and Kyrgyzstan. These events reflected significant growth in the advocacy capacity of the NGO sectors. Whether this progress could be sustained remained to be determined. This year's reports suggest both promising developments as well as disappointments. In Georgia, improved relations between the sector and the government following the Rose Revolution gave way to disillusionment when continued improvements did not occur as anticipated. NGOs in 2005 found themselves stymied in attempts to influence policy by a government in which decisions were made by a few officials, as well as by their own lack of capacity to work cooperatively to advocate their positions. In Ukraine, by contrast, in the wake of the Orange revolution, both the overall sustainability score and the scores in most dimensions improved, as NGOs throughout the country demonstrated an increasingly sophisticated understanding of advocacy and engaged in a number of significant initiatives. In the Kyrgyz Republic, the March 2005 revolution resulted in the institution of a new government. Civil society had an unprecedented opportunity to raise its agenda with the new government, and played an important role in the events leading up to elections. As a result of improvements in NGO advocacy and public image, Kyrgyzstan's overall sustainability score increased.

The countries of Central and Eastern Europe did not experience these types of extraordinary political developments. In the Southern Tier, overall scores either remained the same or showed modest improvement, reflecting even progress for the sectors in these countries. In the Northern Tier, most countries experienced little change, perhaps a result of the fact that scores are already in the consolidation phase.

The following summary considers some of the trends on key components in the countries covered by the index.

Northern Tier

In the Northern Tier no country significantly improved its score either overall or in any dimension. This continues a trend observed last year, in which most countries, having reached the consolidation stage with relatively mature NGO sectors, have more limited opportunity to make dramatic improvements in the sustainability of their NGO sectors. The one exception is Slovenia, which remains in the mid-transition phase, as the failure to close a planned agreement between the NGO sector and the government, and the government's refusal to prioritize NGO development, led to a decrease in the overall sustainability score.



The Northern Tier countries completed their first year as members of the EU. EU membership thus far has not contributed to significant improvements in NGO financial sustainability, largely because of the complications involved in accessing EU funds. Organizations in Hungary, Poland, Latvia and Lithuania all report difficulties in obtaining EU funds due to complex bureaucratic procedures, as only the larger, well-developed organizations were able to navigate the funding process. Hungarian and Latvian organizations report that they have not received expected government funding and training to prepare and qualify them for EU funding. The reports from Slovakia and Hungary note that EU requirements that organizations front project costs, and receive payment only when projects are underway or complete, have strained the capacity of many NGOs.

Legal environment scores declined in several countries. This year's reports make clear that even in countries that have reached the consolidation stage, vague laws and undefined terms can interfere with NGO activities, and that ongoing attention to the legal framework is necessary. In some countries, basic framework legislation has not been addressed since the early 1990s, and is often incomplete or ambiguous. In Hungary, to highlight this problem, an NGO filed the same registration application in twenty different courts, and received twenty very different responses, indicating that the law gives too much discretion to judges. In the Czech Republic, unclear definitions (e.g., of what constitutes a "non-profit organization") make application of the laws difficult. The new Value Added Tax (VAT) law in addition is unclear and complicates the financial management of NGOs. In Lithuania, failure to provide appropriate support for the new 2% law and new not-for-profit accounting rules that treat NGOs like businesses and fail to consider their particular needs led to a decrease in the legal environment score.

There were several new law reform initiatives this year. In Hungary, the government passed a new Law on Volunteerism and a new Law on Freedom of Electronic Information, which will increase the public's access to government information and promote public participation. The government in Slovenia passed amendments to the Foundation Act, and is now considering a new Tax Law, although NGOs have reported that the current draft fails to take into account their interests. In a troubling legal development, Latvia's new Law on Public Organizations and Associations may narrow the freedom to demonstrate and picket.

This year's reports also highlight the rise of volunteerism. The Hungarian government recently enacted a new law on volunteerism that allows organizations to reimburse volunteers for their expenses without being taxed, and generally creates a supportive environment for volunteers. In Lithuania, as foreign funding has decreased, organizations have begun to rely more on volunteers; many are students fulfilling

their internship and social credit requirements. In the Czech Republic increased volunteerism poses a challenge, as organizations need to build capacity to manage their volunteer activities. Estonia requires new regulations to support volunteer activities, especially now that interest in volunteerism is increasing.

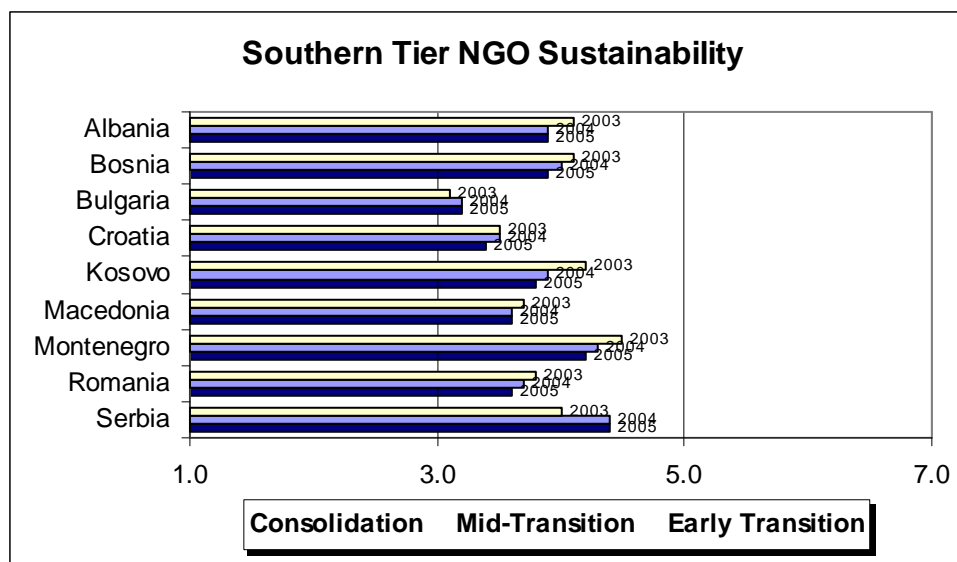
The financial viability dimension in the majority of countries showed little change. NGOs in most Northern Tier countries have succeeded in diversifying their sources of income and overcoming the loss of foreign funding, but this has not necessarily translated into greater financial viability. In the Czech Republic, NGOs receive the bulk of their funding from domestic sources. Nonetheless, the financial viability score decreased because of stagnant corporate and individual donor development, and lack of good financial management and fundraising skills on the part of NGOs. In Hungary, the financial viability score also declined, as 1% law revenues decreased for the first time in eight years, the government was slow to execute procurement contracts and distribute funds from the National Civil Fund, and Ministries were required to make cuts in their budgets, decreasing the funds available for NGO activities.

Lithuania was the only country in which the financial viability score improved. The increased score resulted from implementation of the new 2% law, increased support of NGOs by municipalities, greater cooperation with the business community as the economy improves, and new opportunities for NGOs to carry out projects in other countries as a result of Lithuania's trilateral agreements.

In a key development affecting the advocacy dimension, several countries put in place mechanisms to increase public participation. In Hungary, the dimension score increased, as NGOs were involved with drafting and passing a new Law on E-information that gives the public greater access to government information online, allowing for more informed participation, and NGOs engaged in a number of ambitious sector wide advocacy initiatives. Similarly, in Poland, the Public Benefit Association Act requires that NGOs be included in government decision-making, and they have been invited to consult on legislation, and elect members to a council that advises the government, and have improved cooperation with local governments. In Latvia, the National Program for Strengthening Civil Society requires that all ministries have an official that is responsible for involving NGOs in the Ministry's decision-making process. The Lithuanian government similarly created lobbying mechanisms that led to greater participation.

Southern Tier

The countries of the Southern Tier for the most part continued to advance steadily towards more sustainable NGO sectors. All countries either retained or showed modest gains in their overall sustainability scores.



NGOs in a number of countries assert the need for additional law reforms, citing vague, unclear, and at times unsupportive laws and regulations. Some countries that have already undertaken significant reform of the laws governing NGOs report a need to build on earlier efforts by addressing tax reform or drafting amendments to address ambiguities, unclear provisions, or poor implementation. In Albania, for example, NGOs report the need for new laws to improve the registration process, as judges have exercised significant discretion in applying the law, and to expand tax benefits. In Macedonia, there is a need to amend the Law on Citizens Associations and for tax reforms to promote philanthropy. Indeed, Romania was the only country with a significant improvement in its legal environment score this year; the improvement was attributable to its new Law on Associations and Foundations, regulations implementing the 1% Law, and amendments to the social services laws. Several new law reforms also were adopted in Bosnia, but the impact of these initiatives on the NGO sector is not yet clear.

One positive trend affecting the organizational capacity dimension in the Southern Tier is the improved ability of NGOs to identify and develop local constituencies. Albania, Bosnia, Croatia, Macedonia and Romania all report that organizations are identifying and reaching out to their constituents more than in past years. For example, the new 1% Law in Romania has motivated NGOs to identify and court their constituents, who are the key to accessing 1% contributions.

One of the most important issues affecting the financial viability of NGOs in the Southern Tier is the decrease of international donor funding and the need to develop local funding sources. In many countries, the increase of local funding is insufficient to make up completely for the loss of foreign funding, but it is enough to offer hope that NGO sectors will achieve a greater level of self-sufficiency. In several countries, NGOs have been able to develop stronger relations with local governments, which are providing more contracts, grants, or in-kind donations. Albania, Bosnia, Bulgaria, Kosovo, Macedonia, and Montenegro all report that NGOs have been able to secure greater support from local governments. However, weak economies in many countries limit the ability for NGOs to turn to corporations or individuals for support. In Bosnia, relationships with corporations are stymied by bad tax laws and a stagnant economy. Similarly, in Bulgaria support from the business community is limited. In Montenegro, the economy is not strong enough to support the NGO community.

The advocacy dimension improved in a number of countries in the Southern Tier, in part because of NGO progress in developing more cooperative and participatory relationships with different levels of government. Following the national elections in Albania, NGO representatives were appointed to government offices, and NGOs now have greater confidence in their abilities to develop more

participatory relations with policy makers at the national level. In Kosovo, government institutions and NGOs have partnered on numerous projects, and almost all government policy groups include representatives from the NGO sector. Organizations in Montenegro enjoy a direct line of communication with policy makers and often partner with government institutions on a variety of projects. NGOs are able to propose legislation and submit policy papers, as well as monitor government activities. The government in Romania has recently created the College for Civil Society Consultations and other mechanisms to give NGOs and members of the media greater access to the political process.

Even where national cooperation mechanisms did not succeed, NGOs were sometimes successful in building collaborative relations with local government. In Croatia and Macedonia, despite the national government's reported unwillingness to foster cooperative relationships, local governments are signing charters of cooperation with NGOs.

The public image dimension has also shown improvement in a number of countries, as NGOs throughout the Southern Tier continue to improve their relations with the media. Albanian organizations enjoy a great amount of coverage and in most instances it is positive. The media, however, still fails to recognize the difference between for-profit corporations and NGOs. In Bosnia and Croatia, the media is providing more coverage of the NGO sector and seeks out its expertise on specific issues. Bulgaria, Kosovo, Montenegro and Romania have all experienced similar improvements in coverage.

Eurasia

As discussed above, scores across Eurasia for the most part were either static or fell. Only three of the twelve countries in the region saw even a slight increase in their overall sustainability scores, and six saw their scores decrease.

Russia, West NIS, and Caucasus

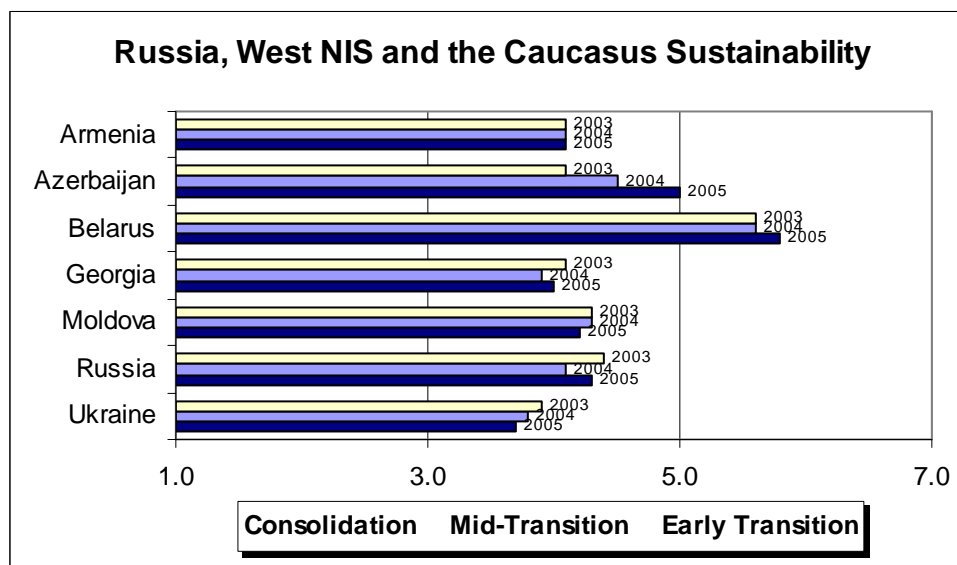
As discussed in the opening paragraphs of this paper, restrictive law reform initiatives by a number of governments in the region were one of the year's most significant developments. One of the most publicized initiatives was Russia's new amendments to the laws on non-commercial organizations and public associations. The amendments expand the grounds on which the registration authority may deny registration; increase the reporting burden on organizations by, e.g., requiring them to report of all funds received from foreign sources and how these are allocated or used; and give to the government invasive powers to interfere in the internal operations of organizations. The law in draft form received criticism internationally from among others, the Council of Europe, international NGOs, and United States Secretary of State Condoleezza Rice, who said, "We would certainly hope that the importance of nongovernmental organizations to a stable democratic environment would be understood by the Russian government."²

With Presidential elections scheduled for March 2006, the government of Belarus put in place five new laws or edicts to restrict NGO activity. The legal environment deteriorated due to the adoption of new laws and regulations and the administration's harassment of independent NGOs. This has had a negative impact on most of the other dimensions of the Index. Restrictive laws, for example, have made it difficult for Belarusian NGOs to obtain foreign funding, and thus are an obstacle to NGO financial viability. The government's relentless campaign to restrict NGO rights led to a decrease in Belarus' legal

² G. Kessler, "Secretary Criticizes Russia's NGO Law: Rice Defends Right To Freely Associate," The Washington Post, December 8, 2005; Page A27.

environment score to 7, the lowest score available on the Index, and deterioration in its overall score to 5.8, the worst score on the Index this year.

Georgia was an exception to this trend of deteriorating legal environments. In Georgia, the government has enacted a Tax Code that preserves existing benefits and allows corporations to deduct 8% of their income and creates new mechanisms for NGO VAT exemptions, thus liberalizing tax benefits for NGOs.



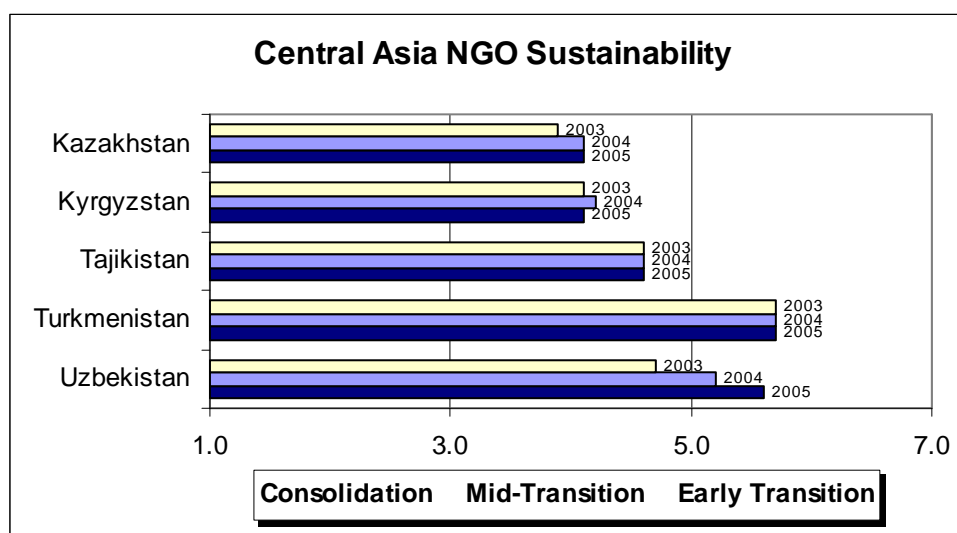
As foreign funding of NGO activities continues to decrease, organizations struggle to improve local sources of funding. In many countries, laws and regulations restrict the ability of organizations to develop local funding sources. The effect of the decrease in foreign funding and NGOs' inability to find domestic sources has had a negative impact on financial viability throughout the region. In Azerbaijan, for example, the financial viability of NGOs has begun to deteriorate as foreign donors have reduced their presence. The laws in Belarus restrict both NGO economic activities and philanthropy, cutting off two potential sources of NGO income. Individuals do not support NGOs in fear of being audited by the tax authorities. In Moldova, domestic philanthropy is hampered by, e.g., slow economic growth and the absence of a culture of charitable giving, and local governments often lack the resources to provide support for local NGO initiatives. Only in Ukraine have NGOs reported an increase in domestic funding and a consequent increase in the score for the financial viability dimension. Following the revolution in Ukraine, domestic funding of NGOs has risen dramatically and decreased the sector's overall dependence on foreign funding.

NGO participation in governing and policy making has not progressed in this region. The Azerbaijani government tried to limit the role of NGOs in the buildup to the November 2005 elections, and mechanisms for participation in the political process do not yet exist. The government in Belarus has effectively excluded NGOs from participating in government policy-making; there are few channels NGOs to cooperate with government agencies, and no mechanism exists to organize participation. NGOs in Moldova generally lack the capacity and political strength to influence policy. The NGO sector in Georgia was expecting to have a significantly better relationship with the government following the Rose Revolution, but has been disappointed. Many government officials are of the mindset that those from the NGO sector worthy of participating are now in the government and that NGOs have little more to offer.

The countries in this region also experienced frustrations in their relationships with the media in the past year. For example, in Armenia, organizations have become more adept at reaching out to the media, but have nonetheless failed to do so. Similarly, in Azerbaijan, some organizations have developed media strategies to improve their public image, but lack the skills, finances, and experience to implement them. Cooperation between Georgian NGOs and the media was high during the revolution, but has decreased over the past year. NGOs in Belarus generally avoid the media altogether as a matter of self-preservation.

Central Asian Republics

Sustainability scores in this region showed little progress, and in one case, reflected a serious deterioration in the environment for NGO sustainability. Of the five republics, only Kyrgyzstan had an improvement in its overall sustainability score. Scores for Kazakhstan and Tajikistan remained the same. Turkmenistan and Uzbekistan both saw their scores worsen, with Uzbekistan experiencing a substantial decrease in score for the second year in a row as a result of the government's continuing efforts to crack down on the sector.



Turkmenistan once again remained with Belarus at the bottom of the index, with the government continuing to control most NGO activities. Few NGOs can register as a result of restrictive laws, and the receipt of grant and other funds by NGOs is also controlled to the point where their survival is difficult.

Uzbekistan experienced serious decreases in both the overall score and the scores for most dimensions. Since the government's violent suppression of the May 2005 uprising in the Andijan region, NGOs in Uzbekistan have been subject to harassment and human rights abuse. All independent organizations are subject to monitoring and many have been asked to close down voluntarily. Banking restrictions passed in 2004 have left over 90% of organizations without access to foreign funding, and staff and volunteers are leaving NGOs in fear that they will be targeted by tax officials.

In Kazakhstan, increases in the financial viability, service provision, and infrastructure dimensions were offset by decreases in organizational capacity and advocacy. The financial viability dimension improved as a result of increases in domestic funding of NGOs, by the government, the business community and individuals.

Tajikistan also saw some individual dimensions – organizational capacity, infrastructure, and public image – improve, while others, e.g., legal environment, declined. Declines in the legal environment score were driven by increased administrative harassment in the form of audits and inspections.

In Kyrgyzstan, improvements in NGO advocacy and public image in the wake of the March 2005 change in government led to an increased overall score. Improvements in the advocacy dimension stemmed from increases in NGO advocacy activities following March 2005, including participation in a nationwide campaign for fair elections and local NGO campaigns to monitor government compliance with the law. NGO public image improved in part as a result of a reduction in criticism of human rights and pro-democracy NGOs following the change in government, as well as emerging evidence of high levels of public awareness of the NGO sector.

Conclusion

The year's Index reflects a widening split in the Europe & Eurasia region. While there has been steady progress in a number of countries, developments with respect to restrictive laws in Eurasia suggest backsliding on the part of some governments. These events will require careful monitoring in the coming year.